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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Centro Legal de la Raza, <i>et al.</i> ,)	CASE NO. 3:21-cv-00463-SI
Plaintiffs,)	
v.)	JOINT STATUS REPORT AND [PROPOSED]
)	ORDER
Executive Office for Immigration)	
Review, <i>et al.</i> ,)	
Defendants.)	

STATUS REPORT

The parties by and through their undersigned counsel hereby notify the Court that the Rule at issue in this case, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 Fed. Reg. 81,588 (Dec. 16, 2020) (“the Rule”), remains under review by the Department of Justice (“Department”). The Department has represented to Plaintiffs that it has made progress in its review, as evidenced by the Rule’s inclusion in the Executive Branch’s Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions. *See* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1125-AB18>.

In the parties’ June 21, 2022, status report, the Department noted the Supreme Court’s recent

1 decision in *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057 (2022), and the parties stated that they would
2 “provide the Court with their positions as to the applicability, if any, of the decision by or in their next
3 status report.” At this time the parties disagree as to the applicability of *Aleman Gonzalez* but agree that
4 the case should remain in abeyance to allow the regulatory process to proceed.

5 The Department believes that the Supreme Court’s interpretation of 8 U.S.C. § 1252(f)(1)
6 renders the Court’s preliminary injunction unlawful and likely also renders unlawful the Court’s stay of
7 the Rule’s effective date under 5 U.S.C. § 705 because both orders “enjoin or restrain” the Department
8 from implementing 8 U.S.C. §§ 1229a and 1229c through the Rule. *See Aleman Gonzalez*, 152 S. Ct. at
9 2064-65 (holding that section 1252(f)(1) prohibits lower courts from enjoining “the way that [a
10 provision is] being carried out” (internal quotation marks omitted)). However, *Aleman Gonzalez* only
11 directly addressed section 1252(f)(1)’s application to injunctive relief. The Supreme Court is currently
12 considering section 1252(f)(1)’s application to “set aside” relief under 5 U.S.C. § 706(2) in *United*
13 *States v. Texas*, No. 22-58 (U.S. cert. granted July 21, 2022), and the Department believes that a
14 decision on that issue may address the types of remedies and orders barred by section 1252(f)(1), which
15 would likely shed important light on the propriety of postponing an effective date under 5 U.S.C. § 705.
16 Accordingly, the Department believes that any briefing on the propriety of the Rule’s postponement
17 should wait until the Supreme Court’s decision. Given that the postponement of the effective date
18 independently bars the government from implementing the challenged Rule, the Department believes it
19 unnecessary and not in the interests of judicial economy to move to vacate the preliminary injunction at
20 this time. The Department thus believes that the proceedings should remain in abeyance with the
21 Court’s preliminary injunction and effective date postponement in place.

22 Plaintiffs disagree with the Department’s position on the applicability of 8 U.S.C. § 1252(f)(1)
23 but agree that the proceedings should remain in abeyance with the Court’s preliminary injunction and
24 effective date postponement in place. Plaintiffs believe it would be a waste of judicial resources for the
25 Court to consider the parties’ competing interpretations of *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057
26 (2022), and 8 U.S.C. § 1252(f)(1) at this time because the Supreme Court will issue an order in *United*
27 *States v. Texas*, No. 22-58 (U.S. cert. granted July 21, 2022), that will almost certainly reshape the
28 parties’ positions. Furthermore, Plaintiffs anticipate that the Government will soon issue a new rule that

will inform the next stages of this litigation.

Given the parties' agreement that the proceedings should remain in abeyance to allow the regulatory process to proceed, the parties request that the Court continue the abeyance and propose submitting another joint status report in 90 days.

Respectfully submitted,

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Counsel for Defendants

Dated: October 31, 2022

~~[PROPOSED]~~ ORDER

The parties are ordered to submit a status report within 90 days of this order.

DATED: October 31, 2022



HON. SUSAN ILLSTON
United States District Judge